

USA v. Brosky - Prelim. exam.

AO 432
(Rev. 2/84)

Administrative Office of the United States Courts

WITNESS AND EXHIBIT RECORD

United States District Court
DISTRICT OF DELAWARE

UNITED STATES OF AMERICA

v.

EDWARD BROSKY

Criminal Complaint

Wilmington, Delaware 1

CASE NUMBER: 08-135-m

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. Between, on or about June 22, 2006 and July 29, 2008 in New Castle County, in the District of Delaware, defendant did:

knowingly receive child pornography

in violation of Title 18 United States Code, Section(s) 2252A(a)(2).

I further state that I am a(n) Special Agent, FBI and that this complaint is based
Official Title
on the following facts:

See attached Affidavit

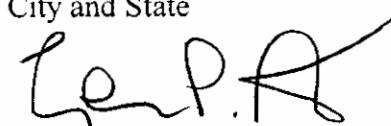
Continued on the attached sheet and made a part hereof: Yes


Signature of Complainant
Theodore J. Theisen
Special Agent, FBI

Sworn to before me and subscribed in my presence,
July 30, 2008
Date

at Wilmington, DE
City and State

Honorable Leonard P. Stark
United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

GOVERNMENT
EXHIBIT

1
08-135-m

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
v.) Case No.08-135-m
)
)
EDWARD BROSKY,) ---
)
)
 Defendant.)

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Theodore J. Theisen, a Special Agent with the Federal Bureau of Investigation (FBI),
Baltimore Division, Wilmington, Delaware Resident Agency, being duly sworn, depose and state
as follows:

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI). I have
been employed by the FBI since March of 2004. I have successfully completed the following
FBI cyber crime courses: Cyber Investigative Techniques and Resources, Network Security
Essentials, Network Investigative Techniques for Agents, Counterterrorism &
Counterintelligence Investigations for Cyber Investigators, Advanced Network Investigation
Techniques/UNIX, Wireless Computer Intrusion Techniques, Crimes Against Children - Juvenile
Issues, Crimes Against Children - Basic, Image Scan, and Linux for Law Enforcement Officers.
Prior to working for the FBI, I was employed in the Information Technologies field for
approximately six years. During that time, I gained experience in systems engineering,
programming, automation and systems management. I have held positions as a Computer

Programmer, a Systems Management Engineer, and an Outage Analyst. I am familiar with many different Operating Systems, including Microsoft Windows and all of its versions and various versions of UNIX and Linux. In addition, I have industry recognized Microsoft Certifications as a Microsoft Certified Professional plus Internet (MCP+I), and a Microsoft Certified Systems Engineer (MCSE).

2. As a federal agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States.

3. This affidavit is submitted in support of a criminal complaint charging Edward Brosky, of Wilmington, Delaware, with violating Title 18, United States Code, Section 2252A(a)(2), Receipt of Child Pornography.

4. For the reasons set forth below, I respectfully submit that this affidavit contains ample probable cause to believe that Edward Brosky knowingly received child pornography via the Internet.

5. The statements contained in this Affidavit are based on my experience and background as a Special Agent and on information provided by other law enforcement agents. I have not set forth every fact resulting from the investigation; rather, I have included only that information necessary to establish probable cause to charge Edward Brosky with violating Title 18, United States Code, Section 2252A(a)(2), Receipt of Child Pornography.

PERTINENT FEDERAL CRIMINAL STATUTES

6. Title 18, United States Code, Section 2252A, entitled "Certain activities relating to material constituting or containing child pornography," provides, in pertinent part:

(a) Any person who –

(1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes –

any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or
any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;

(3) knowingly reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer;

....

(5)(B) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer,

shall be punished as provided in subsection (b).

7. Title 18, United States Code, Section 2256 defines the term “minor” as any person under the age of eighteen years.

8. Title 18, United States Code, Section 2256(8) defines “Child Pornography” as “any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where – (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; . . . [or] (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.”

9. Title 18, United States Code, Section 2256(2) defines “sexually explicit conduct” as actual or simulated:

- (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (b) Bestiality;
- (c) Masturbation;
- (d) Sadistic or masochistic abuse; or
- (e) Lascivious exhibition of the genitals or pubic area of any person.

10. Title 18, United States Code, Section 2256(5) defines "visual depiction" as including undeveloped film and videotape, and data stored on computer disk or by electronic means that is capable of conversion into a visual image.

DETAILS OF INVESTIGATION

11. On April 24, 2008, while conducting an online undercover session, a law enforcement officer ("UC-1") entered a publicly accessible newsgroup dedicated to trading images of child pornography. While in this newsgroup, UC-1 observed that multiple user names had made posts with titles commonly associated with child pornography. He observed that multiple postings were made on April 11, 2008 and April 18, 2008 by a user identifying himself as "Ali-Baba."

12. UC-1 then downloaded over 100 postings made by Ali-Baba, each of which contained a single image. Many of the images were child pornographic in nature. For example, one of the files that was downloaded on April 11, 2008 was named "ln-254-22.jpg." This file depicts a prepubescent female, appearing to be approximately nine or ten years of age, posing naked with her legs spread exposing her vagina. Another example is a file that was downloaded on April 18, 2008 and named "pret-011a-020.jpg." This image depicts a prepubescent female,

appearing to be approximately nine or ten years old, sitting naked on a swing with her legs spread exposing her vagina. Also downloaded on April 18, 2008 was a file with the name "pret-011a-118." This file depicts an unclothed prepubescent female who appears to be approximately nine or ten years of age with one of her legs bound with a green rope elevated above her head exposing her vagina and anus.

13. Header information in these posts indicated that they were posted through the news provider Giganews.com, which is located in Austin, Texas.

14. On April 28, 2008, in response to an administrative subpoena, Giganews.com produced business records confirming that the above headers were posted by the account subscribed to by Edward Brosky, at his residential address in Wilmington, Delaware. Giganews also provided the number of the credit card that Brosky used when subscribing to this service.

15. Giganews.com also provided log files that, based on additional information provided by an internet service provider, confirmed that, on certain dates in April 2008, Edward Brosky's Giganews.com account was accessed from IP addresses assigned to Edward Brosky's home internet service account.

16. On July 30, 2008, law enforcement agents executed a federal search warrant at Edward Brosky's Wilmington residence. Brosky, his wife, and his dog were present when agents entered the residence.

17. Pursuant to the search warrant, law enforcement agents seized various pieces of computer equipment, including two computers, two external hard drives, about 10 DLT backup tapes and various CDs and DVDs. A preview search of one of the drives revealed over 90,000 images of child pornography and child erotica.

18. Also seized from the residence were printouts and handwritten notes regarding various child pornography series that Brosky had collected or was seeking to collect online.

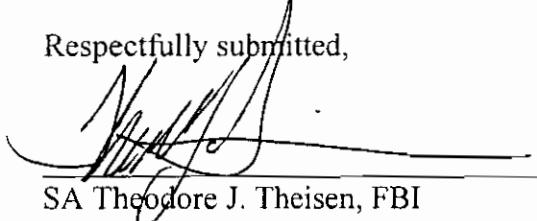
19. After being advised of the nature of the search warrant and the fact that he was not in custody and was free to leave the scene, Edward Brosky consented to an interview with law enforcement officers. During the course of the interview, Edward Brosky admitted that he had downloaded thousands of complete series of digital images of child pornography and child erotica. He stated that he knew that doing so was illegal and said words to the effect of "I am guilty of having child pornography" and "Having child pornography is worse than robbing a bank." He also stated that he preferred images depicting females between the ages of nine and ten years old. He further stated that has been collecting images of child pornography and child erotica from the internet since about 1998, and that he last viewed child pornography on his computer around 3:00 p.m. yesterday – July 29, 2008.

20. Law enforcement agents showed Edward Brosky printouts of three images of child pornography that he acknowledged downloading from the internet. These images depict naked prepubescent females engaged in the lascivious exhibition of their genitalia and pubic areas.

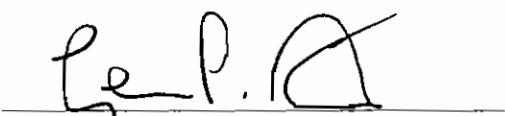
CONCLUSION

21. Based on the above information, there is probable cause to charge Edward Brosky, of Wilmington, Delaware, with violating Title 18, United States Code, Section 2252A(a)(2), Receipt of Child Pornography.

Respectfully submitted,


SA Theodore J. Theisen, FBI

Sworn and subscribed before me
this 30th day of July 2008


Honorable Leonard P. Stark
United States Magistrate Judge